



Marriage: Let the People Decide, Not Judicial Activists

By U.S. Sen. John Cornyn

Throughout history, mankind has recognized the fundamental importance of marriage and its traditional definition as the union of one man and one woman. That understanding is reflected in the laws, traditions, and customs of all 50 states. And no legislature in the nation has ever seen fit to alter this historic institution. However, the top court in Massachusetts recently eliminated traditional marriage in that state, and it is only because of this extreme judicial activism—overruling the will of the American people—that the institution of marriage has been dismantled.

In 1996, the Congress overwhelmingly passed, and then-President Bill Clinton signed, the bipartisan Defense of Marriage Act which defined for federal purposes that marriage consists of one man and one woman. Yet despite this solid support on both the state and federal level, the Massachusetts court called traditional marriage a “stain” on our laws that must be “eradicate[d].”

Most Americans instinctively support two fundamental truths: First, every individual is worthy of respect. Second, that traditional institution of marriage is worthy of protection. Some opponents of traditional marriage laws, however, have accused those who disagree with them of intolerance—even though support for traditional marriage reflects traditional values shared by most Americans. Those deeply-held values deserve more respect than that. And as Sen. Ted Kennedy (D-Mass.) said in 1996, “there are strongly held religious, ethical, moral beliefs that are different from mine with regards to the issue of same-sex marriage which I respect and which are *no indications of intolerance*.”

If anything, it is the judicial activists—in Massachusetts and across the nation—and not ordinary Americans who are intolerant. By imposing their personal political agenda on the rest of the nation, judicial activists not only demonstrate their contempt and intolerance of traditional values, they disrespect democracy, and the rule of law itself.

Last November, the Supreme Judicial Court of Massachusetts ruled that traditional marriage laws are unconstitutional. In doing so, the court recognized that “our decision marks a change in the history of our marriage law,” and that “[m]any people hold deep-seated religious, moral, and ethical convictions that marriage should be limited to the union of one man and one woman.”

Yet the court condemned traditional marriage, and did so in rather startling terms. After acknowledging the “deep-seated religious, moral, and ethical convictions” motivating traditional marriage supporters, the court nevertheless found “*no rational reason*” for such laws, and in fact it found that

traditional marriage is “*rooted in persistent prejudices*.”

The public outcry against the insulting Massachusetts ruling, and in defense of marriage, was immediate and immense. Broad majorities of Americans again registered their support for traditional marriage. Most Americans believe that support for traditional marriage and respect for all mankind are fully consistent and not mutually exclusive. But even after the Massachusetts State Senate gave the court an opportunity to reconsider its earlier, flawed ruling, it refused to do so. In fact, the court demonstrated even greater contempt for both democratic and traditional values than did its previous ruling.

First, the Massachusetts court dismissed the values of the vast majority of Americans yet again by claiming that there is “no rational reason” to uphold traditional marriage laws. But it went even further this time, suggesting that such laws are based solely on “invidious discrimination” and “personal residual prejudice.”

What’s more, the court gave credit to the rather alarming views of the most extreme opponents of traditional marriage, when it concluded that traditional marriage laws are irrational and unconstitutional—but “[i]f ... the Legislature were to jettison the term ‘marriage’ altogether, it might well be rational and permissible.”

Finally, the anti-marriage court ruling foreshadowed future judicial action by challenging *all* traditional marriage laws. The court noted the existence of the federal Defense of Marriage Act, but then expressed its unwillingness to enforce it. The court pointedly noted that “[c]ourts define what is constitutionally permissible,” and reiterated its view that traditional marriage laws are irrational and impermissible. It then concluded, rather ominously, that “[w]e do not resolve, nor would we attempt to, the consequences of our holding in other jurisdictions.”

The institution of marriage deserves better than this. Our institutions of democracy deserve better. And the American people deserve better. They deserve respect, and American values should not be so readily dismissed. Traditional marriage has served as the underpinning of civilized society for countless generations. Opponents of traditional marriage should demonstrate greater tolerance and respect toward others, by respecting democracy and ceasing their judicial war against marriage.

Sen. Cornyn is chairman of the Senate subcommittee on the Constitution, Civil Rights and Property Rights. He held a hearing last September to examine the threat posed by judicial activism to the bipartisan Defense of Marriage Act.